

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOANNE M. LAEL,

Plaintiff,

v.

Case No. 18-cv-1964-pp

NANCY A. BERRYHILL,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE (DKT. NO. 3)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff indicates that she is not married, is not employed and has no minor children she is supporting. Dkt. No. 3 at 1. The plaintiff's only source of income is \$1,200 per year (approximately \$141 per month), which is her *per capita* payment from the Oneida tribe, and an additional \$500 per year for the tribal meetings; against

this income, the plaintiff lists monthly expenses for rent, water and electricity of approximately the same amount. Id. at 2-3. The plaintiff indicates that her mother gives her money and pays her car insurance. Id. The plaintiff owns a car worth approximately \$2,000 and has \$20 in a checking or savings account; she owns no other property of value. Id. at 3-4. Under the “Other Circumstances” section, the plaintiff states that “[if] my mother didn’t help me with the money, I would and have been homeless living in my car.” Id. at 4. The court concludes that the plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The complaint indicates that the Commissioner’s decision denying benefits should be reversed because the Administrative Law Judge lacked substantial evidence for his denial of the plaintiff’s claims for a period of disability and disability insurance benefits. Dkt. No. 1 at 2. At this early stage, and based on the information in the complaint, the court concludes that there

may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without paying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 11th day of January, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge